

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JUL 18 2005

In the Matter of the Appeal of Air Quality)
Permit No. CT-1352A (Corrected),)
Two Elk Generating Station – Unit 1)

Tami A. Lorenzon, Director
Environmental Quality Council
Docket No. 02-2601

Order Granting Motion to Dismiss

Petitioner Two Elk Generating Partners (TEGP) moved the Environmental Quality Council (EQC) to dismiss this matter. The Wyoming Department of Environmental Quality (DEQ) does not oppose the motion. The EQC has considered the motion, and conducted a hearing on June 27, 2005, at which the parties were given an opportunity to be heard concerning the motion. On this basis, the EQC finds and concludes as follows:

1. On October 23, 2002, TEGP filed a petition for EQC review of a decision by the Wyoming Department of Environmental Quality (DEQ) that Permit No. CT-1352A (Corrected) had terminated. DEQ had determined that TEGP failed to commence construction prior to August 20, 2002, as required by the permit. TEGP disagreed, and so appealed to the EQC.

2. Prior to hearing, TEGP and DEQ reached a settlement in this matter, and entered into a Joint Stipulation they filed with the EQC on May 28, 2003. At the request of the parties, the EQC entered an "Order Approving Joint Stipulation for Disposition of Contested Case." The terms of the approved stipulation included agreement that the permit should be modified to extend the deadline for commencing construction and to reduce certain emissions limitations. In its Order, EQC retained jurisdiction over the matter for purposes of determining compliance with the terms of the Joint Stipulation.

3. In accordance with the Joint Stipulation and the EQC Order, DEQ issued a modified air quality permit, Permit No. CT-1352B, on May 29, 2003. Under this permit, TEGP was required to commence construction before May 29, 2005.

4. DEQ has determined that, prior to May 29, 2005, TEGP completed the construction of the foundation for the main stack, and entered into a binding written contract to purchase a site-specific main boiler, which contract is not contingent upon any additional notice to proceed or exercise of an option. TEGP submitted documentation of the commencement of construction to the DEQ. TEGP has, therefore, commenced construction as required by Condition 4 of Permit No. CT-1352B.

5. Now that DEQ has determined that construction has commenced, and the parties have complied with and fulfilled the terms of the Joint Stipulation, the EQC does not need to retain jurisdiction over this matter.

IT IS THEREFORE ORDERED that:

1. The DEQ's issuance of Permit No. CT-1352B is hereby confirmed, and that permit remains valid and binding upon TEGP.

2. This matter is dismissed, and the EQC's continued jurisdiction over it is terminated.

3. TEGP will submit monthly status reports to the DEQ beginning August 1, 2005, and quarterly status reports to the EQC beginning October 1, 2005. These status reports will include information on engineering, procurement, financing, and construction aspects of the project. TEGP will continue to submit these reports until construction of the project is at least 50% complete, or until the EQC informs TEGP that it may stop submitting the reports.

Dated this 30th day of June, 2005.



Mark Gordon, Chair
Wyoming Environmental Quality Council

CERTIFICATE OF SERVICE

I, Kim McGee, certify that at Cheyenne, Wyoming, on the 19th day of July, 2005, I served a copy of the foregoing ORDER GRANTING MOTION TO DISMISS by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Mary A. Throne
Hickey & Evans, LLP
1800 Carey Ave., Suite 700
P.O. Box 467
Cheyenne, WY 82001

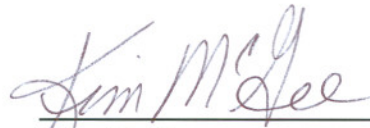
Edward W. Harris
Holland & Hart
2515 Warren Avenue, Suite 450
P.O. Box 1347
Cheyenne, WY 82003-1347

also to the following persons via interoffice mail:

John Corra, Director
Department of Environmental Quality 122
W. 25th Street, Herschler Building
Cheyenne, WY 82002

Nancy Vehr
Wyoming Attorney General's Office
123 Capitol Building
Cheyenne, WY 82002

Dan Olson, Administrator
Air Quality Division
Department of Environmental Quality 122
W. 25th Street, Herschler Bldg.
Cheyenne, WY 82002



Kim McGee
Environmental Quality Council
122 W. 25th Street,
Herschler Bldg., Rm. 1714
Cheyenne, WY 82002
Tel: (307) 777-7170
Fax: (307) 777-6134